In the Supreme Court

OF THE

# United States

SEP 24

CHARLES ELMO

OCTOBER TERM, 1934

## Nos. 35-36

NATIONAL PAPER PRODUCTS COMPANY (a corporation),

*Petitioner,*

vs.

GUY T. HELVERING, as Commissioner of Internal Revenue,

*Respondent.*

ZELLERBACH PAPER COMPANY (a corporation),

*Petitioner,*

vs.

GUY T. HELVERING, as Commissioner of Internal Revenue,

*Respondent.*

## BRIEF FOR PETITIONERS.

**On Writs of Certiorari to the United States Circuit Court of Appeals for the Ninth Circuit.**

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## BRIEF FOR PETITIONERS.

**On Writs of Certiorari to the United States Circuit Court of Appeals for the Ninth Circuit.**

## OPINIONS BELOW.

This proceeding comes before this Court on writs of certiorari to the Circuit Court of Appeals for the Ninth Circuit to review judgments of that Court in the two cases above noted.

These judgments are found in No. 35, R. 112, and No. 36, R. 89.

A joint opinion, affirming the decision of the United States Board of Tax Appeals was rendered by the Circuit Court of Appeals and reported in 69 F. (2d) 857. It is printed in No. 35, R. 94.

A joint opinion was rendered by the Board of Tax Appeals and is found in 26 B. T. A. 92. It is printed in No. 35, R. 21. A dissenting opinion was also filed (No. 35, R. 28).

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## JURISDICTION.

The judgments of the Circuit Court of Appeals in the two cases were entered on February 28, 1934 (No. 35, R. 112; No. 36, R. 89).

A single petition for a Writ of Certiorari in each case was filed on May 10, 1934, and the writs were granted June 4, 1934 (No. 35, R. 117; No. 36, R. 92).

Jurisdiction rests on subdivisions (a) and (c) of Section 240, amended, of the Judicial Code (U. S. C. A. title 28, Sec. 347; Mar. 3, 1891, c. 517, Sec. 6, 26 Stat. 828; Mar. 3, 1911, c. 231, Sec. 240, 36 Stat. 1157; Feb. 13, 1925, c. 229, Sec. 1, 43 Stat. 938).

## STATEMENT OF THE CASE.

This is a joint brief in support of petitioners in the two cases involved.

Zellerbach Paper Company, one of the Petitioners herein, is a California corporation, with its principal place of business at San Francisco, California. National Paper Products Company, the other Petitioner, is also a California corporation, and it, together with Sanitary Products Corporation, was a subsidiary of Zellerbach Paper Company during the taxable period involved.

On July 15, 1925, at which time the 1924 Revenue Act (43 Stat. 253) was in force, the Zellerbach Paper Company filed a consolidated income tax return on behalf of itself and its two subsidiaries, above named, with the Collector of Internal Revenue at San Francisco, California (No. 35, R. 22). This consolidated return covered the fiscal year of the corporations in question, beginning May 1, 1924, and ending on April 30, 1925. The original document is before this Court for its inspection. The tax reported therein was thereafter paid.

On February 26, 1926, the Revenue Act of 1926 (44 Stat. 9) became operative. Under Sec. 230 of the Revenue Act of 1924 the net income of corporations was subject to a tax of 12½ per cent; under the 1926 Act, which was retroactive in part (Sec. 281), the net income of corporations was subject to a tax of 13 per cent for the calendar year 1925, and 13½ per cent thereafter (Sec. 230(a)(1)(2)); these rates being in lieu of the 12½ per cent rate under the 1924 Act.

After the enactment of the 1926 Act the Internal Revenue Commissioner furnished the Zellerbach Paper Company with a copy of Treasury Decision 3843 (No. 35, R. 23), which provided that any corporation becoming liable for an additional tax under the 1926 Act should file a new return, and also a form designated as "U. S. Internal Revenue Form 1120A Revised, April, 1926" (No. 35, R. 77).

In accordance with the instructions contained in Treasury Decision 3843 (printed herein at page 11) the Zellerbach Paper Company, having theretofore filed a consolidated income tax return on behalf of itself and its two subsidiaries above named, supplied the Commissioner with the additional information as called for in Internal Revenue Form 1120A. This original document is also before this Court for its inspection.

This document, which we shall characterize as an "Amended Return", inasmuch as the Commissioner himself so designated it (No. 35, R. 78), was filed with the Collector of Internal Revenue at San Francisco, California, on May 14, 1926 (No. 35, R. 23).

This amended return sets forth the net income for the fiscal year ended April 30, 1925, as reported by the Zellerbach Paper Company on behalf of itself and its subsidiaries *as per its original return;* it also designates that portion of the fiscal year in question falling in the year 1924; the portion falling in the year 1925; and applies the new rate, to-wit, 13 per cent to that part of the net income of the corporations attributable to 1925, and makes the necessary computations show-

ing, by reason of the change in the rate, an additional tax of $2111.65. This additional tax was paid at the time of the filing of the return (No. 35, R. 97).

Thereafter, the Commissioner of Internal Revenue made an audit of the books of the Zellerbach Paper Company, based upon the original and amended returns above mentioned, and determined that additional tax was due for the period in question in the sum of $28,258.95, and that this tax was allocable to the parent company and its two subsidiaries as follows:

| | |
|---|---|
| Additional tax due from Zellerbach Paper Company ..... | $ 7,601.55 |
| Additional tax due from National Paper Products Company ..... | 20,657.40 |
| Additional tax due from Sanitary Products Corporation ..... | None |

(No. 35, R. 41.)

The deficiency notices were mailed October 10, 1928, a period of approximately three years and three months after the original return was filed on July 15, 1925, but less than three years after the "amended return" was filed, on May 14, 1926 (No. 35, R. 39; No. 36, R. 36).

Section 277(a)(1) of the 1926 Act (44 Stat. 9) provides for a three year statute of limitations after the filing of the return. This three year statutory period was applicable to the cases herein (No. 35, R. 24, 99, 105).

The deficiency notices (dated October 10, 1928) were obviously mailed more than three years after the filing

of the original return on July 15, 1925, and less than three years after the filing of the amended return on May 14, 1926.

The statute of limitations under Section 277(a)(1) of the 1924 Act (43 Stat. 253) was four years.

There were no changes in the 1926 Act resulting in an increase in tax, other than the increase in the tax rate from 12½ per cent to 13 per cent, this change affecting only the last four months of the fiscal year in question. See Opinion of the Circuit Court of Appeals for the Ninth Circuit, in No. 35, R. 100, 101. The Opinion recites this was conceded by the Commissioner.

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**SPECIFICATION OF ERRORS.**

As set forth in our brief in support of our petition for writs of certiorari, we respectfully submit the Circuit Court of Appeals for the 9th Circuit, erred in the following particulars:

(A) In finding and holding that the collection of the deficiencies in question was not barred by the Statute of Limitations, Revenue Act of 1926, 44 Stat. 9, Section 277(a)(1) thereof.

(B) In finding and holding that the three year period of limitations began to run only with the filing of the Amended Return on May 14, 1926.

(C) In failing to find and hold that the three year period of limitations commenced to run with the filing of the original return, on July 15, 1925.

(D) In failing to hold that the return filed May 14, 1926, was merely an amended return and did not toll the statutory period.

(E) In failing to find and hold that the three year period of limitations began to run with the filing of the original return, even though an amended return was filed on May 14, 1926.

(F) In failing to find and hold that the return filed July 15, 1925, did not become the return required under the Revenue Act of 1926 upon its adoption February 26, 1926.

(G) In finding and holding that the Revenue Act of 1926 required the filing of a new return, where a return had already been filed under the Revenue Act of 1924, where the only requirement was the making of a new computation by reason of the increase in the tax rate by the 1926 Act.

(H) In affirming the Order of the United States Board of Tax Appeals in National Paper Products Company, a corporation, Petitioner, v. Guy T. Helvering, as Commissioner of Internal Revenue, Respondent, C. C. A. No. 7140, which Order found a deficiency in the sum of $20,657.40 (No. 35, R. 29.)

(I) In affirming the Order of the United States Board of Tax Appeals in Zellerbach Paper Company, a Corporation, Petitioner, v. Guy T. Helvering, as Commissioner of Internal Revenue, Respondent, C. C. A. No. 7141, which Order found a deficiency in the sum of $7601.55 (No. 36, R. 26).

## SUMMARY OF ARGUMENT.

(1) The consolidated return filed on July 15, 1925, by Zellerbach Paper Company, on behalf of itself and its subsidiaries, complied strictly with the 1924 Revenue Act in force at that time. The Commissioner admits the good faith of the taxpayers herein in the preparation and filing of this return (No. 35, R. 19).

(2) The additional return filed by these taxpayers on May 14, 1926, after the adoption of the 1926 Revenue Act, was merely an "amendment" to the original return. The original return and the amended return became the return required under the 1926 act. The cases hold that the filing of an amended return does not extend the statutory period.

(3) The "Income Tax" provisions of the 1926 Revenue Act were made retroactive (with unimportant exceptions) to January 1, 1925 (Sec. 286). Similar provisions of the 1924 Act were *repealed* as of the same date. Included in that part of the 1926 law retroactively effective as of January 1, 1925, was section 277 providing for a three year statute of limitations applying to taxes "imposed by this Act". The statutory period within which deficiency notices could be mailed was three years after the filing of the original return on July 15, 1925.

(4) The question involved herein is substantially the same as that in the companion cases pending before this Court (Nos. 37 to 39).

## QUESTION PRESENTED.

The sole question is limitation, i. e., whether the Commissioner was barred on November 10, 1928, when he mailed deficiency notices to the taxpayers herein. The determination of this question is dependent upon whether the statutory period of three years was set in motion on July 15, 1925, the date of the filing of the original return, or only on May 14, 1926, the date of the filing of the "Amended Return".

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## ARGUMENT.

### (1) THE CONSOLIDATED RETURN FILED ON JULY 15, 1925, BY ZELLERBACH PAPER COMPANY, ON BEHALF OF ITSELF AND ITS SUBSIDIARIES, COMPLIED STRICTLY WITH THE 1924 REVENUE ACT IN FORCE AT THAT TIME. THE COMMISSIONER ADMITS THE GOOD FAITH OF THE TAXPAYERS HEREIN IN THE PREPARATION AND FILING OF THIS RETURN (NO. 35, R. 19).

The Zellerbach Paper Company on July 15, 1925, filed a Consolidated Income Tax Return on behalf of itself and its subsidiaries for the fiscal year ended April 30, 1925.

The original return is before this Court for its inspection.

The return is supported by detailed schedules filed in obedience to the requirements of the Revenue Act of 1924 in effect at the time of filing.

The return was intended to convey all necessary information to the Commissioner to enable him to determine whether the correct amount of tax had been reported. The best evidence of the completeness of

the return is that the Commissioner used the return (and the amended return) as the basis for his extensive audit.

The good faith and honesty of the taxpayers herein have not been questioned (No. 35, R. 19).

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**(2) THE "RETURN" FILED AFTER THE ADOPTION OF THE 1926 REVENUE ACT WAS MERELY AN AMENDMENT TO THE ORIGINAL RETURN. THIS ORIGINAL RETURN AND THE AMENDMENT THERETO BECAME THE RETURN REQUIRED UNDER THE 1926 REVENUE ACT.**

After the filing of the original return on July 15, 1925, to-wit, on February 26, 1926, the Revenue Act of 1926 was adopted. The rate of tax against corporate taxpayers under the Act of 1924 was 12½ per cent (Section 230).

The 1926 Act (Sec. 230(a)(1)(2)) provided for a rate of 13 per cent, beginning on January 1, 1925, for the calendar year 1925, and 13½ per cent thereafter.

The fiscal year of the taxpayers herein ended April 30, 1925.

As a result of this change in the 1926 Act, the reported income of these taxpayers was subjected to an additional one-half of one per cent, the additional tax amounting to $2111.65.

No other changes in the 1926 Act affected the return of these taxpayers filed prior to the adoption of the new Act (No. 35, R. 100, 101).

On February 28, 1926 (after the adoption of the 1926 Act) the Commissioner of Internal Revenue issued his Treasury Decision 3843, reading as follows:

"Treasury Decision 3843.

"To Collectors of Internal Revenue and others concerned:

"Any corporation which has filed a return for a fiscal year ending in 1925 and paid or become liable for a tax computed under the Revenue Act of 1924, and is subject to additional tax for the same period under the Revenue Act of 1926, must file a new return covering such additional tax on or before May 15, 1926. Payment of the additional tax may be made at the time the return is filed or, if installment payments are desired, such installments must be paid at the time they would be due if based upon a return for the fiscal year ended February 28, 1926.

D. H. Blair,

Commissioner.

Approved April 1, 1926,

Garbrard B. Winston,

Acting Secretary of the Treasury."

(V-1 C-B. 99)

In response to this Treasury Decision and using a form (U. S. Int. Rev. Form 1120A, Revised April 1926) furnished by the Commissioner (No. 35, R. 96) the taxpayers herein rendered their "Amended Return" reporting an additional tax in the sum of $2111.65.

We respectfully invite the attention of this Court to this form; the manner in which it was prepared by the taxpayers; the designation of the return by the Commissioner as "Amended", and the notation thereon, "See Original Return".

We have referred to this document as an "Amended Return" not merely because that is an accurate description of the document, but because the Commissioner himself so designated it (No. 35, R. 128).

Many cases hold that the filing of an amended return does not extend the statutory period.

Some of these cases are collected in *Isaac Goldmann Company v. Burnet,* 51 Fed. (2d) 427, from which the following is taken:

> "It was conceded, in the opinion of the Supreme Court in *Florsheim Brothers v. United States,* 280 U. S. 453, 462, 50 S. Ct. 215, 218, 74 L. Ed. 542, that the filing of a return, though defective or incomplete, is 'sufficient to start the running of the period of limitation; and that the filing of an amended return does not toll the period.' It was likewise held in *Willingham Loan Co. v. Commissioner* (C. C. A. 5), 36 F. (2d) 49, that the statute begins to run whenever the taxpayer has filed returns with the Commissioner which show facts upon which the proper assessment for the taxable period may be made. See, also, *Thomas v. United States* (D. C.), 22 F. (2d) 1000. The Board of Tax Appeals has also held that this is the rule. See *Appeal of National Refining Co., et al.,* 1 B. T. A. 236; *Appeal of New York Trust Co.,* 3 B. T. A. 583; *Lancaster Lens Co. v. Commissioner of Internal Revenue,* 10 B. T. A. 1153."

The language of the Supreme Court in *Florsheim Bros. v. U. S.,* 280 U. S. 453, 462, 74 L. Ed. 542, 548, referred to, supra, is as follows:

> "The word 'return' is not a technical word of art. It may be true that the filing of a return which is defective or incomplete under Sec. 239 is sufficient to start the running of the period of limitation; and that the filing of an amended return does not toll the period. But the defective or incomplete return purports to be a specific statement of the items of income, deductions and credits in compliance with Sec. 239. And, to have that effect, it must honestly and reasonably be intended as such."

It is our contention that the statutory period was set in motion on July 15, 1925, the date of the filing of the original return, and that the time was not extended by the filing of the amended return on May 14, 1926.

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**(3) THE "INCOME TAX" PROVISIONS OF THE 1926 REVENUE ACT WERE MADE RETROACTIVE TO JANUARY 1, 1925. SIMILAR PROVISIONS OF THE 1924 ACT WERE REPEALED AS OF THE SAME DATE. SECTION 277 OF THE 1926 ACT PROVIDES FOR A THREE YEAR STATUTE OF LIMITATIONS WHICH BECAME EFFECTIVE JANUARY 1, 1925. THE DEFICIENCY NOTICES HEREIN WERE MAILED MORE THAN THREE YEARS AFTER JULY 15, 1925.**

At the time of the filing of the consolidated return on July 15, 1925, the 1924 Revenue Act was in effect.

On February 26, 1926, the 1926 Act was adopted.

Title II of the Act consisted of the "Income Tax" provisions of the law.

Section 286 of the new Act reads as follows:

> "This title shall take effect as of January 1, 1925, except that section 257 and sections 271 to

285 inclusive and this section, shall take effect on the enactment of this Act."

Section 1200 of the new Act reads in part as follows:

"Sec. 1200(a). The following parts of the Revenue Act of 1924 are repealed, to take effect (except as otherwise provided in this Act) upon the enactment of this Act, subject to the limitations provided in subdivision (b):

"Title II (called 'Income Tax') as of January 1, 1925, except section 257 and sections 271 to 282, inclusive;

"Section 257 and sections 271 to 282, inclusive (being certain administrative provisions of the income tax); * * *"

Included within that part of the 1926 Act which became effective January 1, 1925, was section 277, reading in part as follows:

"Sec. 277(a). Except as provided in section 278——

"(1) The amount of income taxes imposed by this Act shall be assessed within three years after the return was filed, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period.

* * * * * * *

"(5)(b). The running of the statute of limitations provided in this section or in section 278 on the making of assessments and the beginning of distraint or a proceeding in court for collection, in respect of any deficiency, shall (after the mailing of a notice under subdivision (a) of section 274) be suspended for the period during

which the Commissioner is prohibited from making the assessment or beginning distraint or a proceeding in court (and in any event, if a proceeding in respect of the deficiency is placed on the docket of the Board, until the decision of the Board becomes final), and for 60 days thereafter."

Sec. 278 of the new Act reads in part as follows:

"Sec. 278(a). In the case of a false or fraudulent return with intent to evade tax or of a failure to file a return the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time."

Included within the Income Tax provisions of the 1924 Act, repealed as at January 1, 1925, was section 277, providing for a four year statute of limitations.

The repeal of the Income Tax provisions of the 1924 law as of January 1, 1925, and the substitution of the income tax provisions of the 1926 Act as of the same date, including section 277, providing for a three year statute of limitations, resulted, in our opinion, in the adoption of returns filed during 1925, covering fiscal years ending during that year, as returns filed under the 1926 Act. If this be true, then the return filed by the taxpayers herein for the fiscal year ended April 30, 1925, became the return under the 1926 Act. The amendment to this return, filed in compliance with T. D. 3843, did not affect the running of the statutory period within which an additional assessment had to be made. This period was begun, we contend, on the 15th day of July, 1925, and had completely expired prior to the mailing of deficiency notices on October 10, 1928.

**(4) THE QUESTION INVOLVED HEREIN IS SUBSTANTIALLY THE SAME AS THAT IN THE COMPANION CASES PENDING BEFORE THIS COURT (NOS. 37 TO 39).**

In the companion cases now pending before this Court (Nos. 37-39) the facts are very similar to those outlined herein. In those cases a consolidated return was filed July 16, 1921, for the fiscal year ended April 30, 1921, and during the time the 1918 Revenue Act (40 Stat. 1057) was in force. Thereafter, to-wit, on November 23, 1921, the 1921 Revenue Act (42 Stat. 227) was adopted. The only effect of the adoption of this Act upon the consolidated return filed therein on July 16, 1921, was the elimination of one-third of the $2000 exemption, or credit, allowed corporate taxpayers by section 236 of the 1918 Act.

The newly adopted Act of 1921 was retroactive i. e. the "Income Tax" portion thereof) as of January 1, 1921.

The Commissioner of Internal Revenue issued T. D. 3305 (amended by T. D. 3310) after the adoption of the 1921 Act, providing for the filing of a new return where the new Act provided for additional taxes.

In the instant cases the taxpayers in obedience to T. D. 3843, filed an "Amended Return" or an "amendment" to the original return.

In the companion cases, the taxpayers did *not* file an amended return, or any additional return.

As a result the Commissioner contended (in the companion cases) that the statute of limitations was never set in motion; here the Commissioner admits

the three year statutory period provided by the 1926 Act was set in motion, but contends further, that it was not set in motion until the amended return was filed on May 14, 1926.

It seems to be conceded, however, that the general principle involved in the two groups of cases is the same.

The majority opinion of the Board of Tax Appeals so states (No. 35, R. 24), and the same cases are cited in support of the opinion as are cited in support of the Board's opinion in the companion cases.

Included are *Myles Salt Co.*, 18 B. T. A. 742; reversed, 49 Fed. (2d) 232; *Isaac Goldmann Co.*, 17 B. T. A. 1103; reversed, 51 Fed. (2d) 427; *Valentine-Clark Co.*, 14 B. T. A. 562; reversed, 52 Fed. (2d) 346. (For convenience the opinions in these three cases are printed in full in Appendix B.)

The Board also cites: *Gus Holstine Dry Goods Company v. Commissioner*, 16 B. T. A. 1124; *Adams, Cushing & Foster, Inc. v. Commissioner*, 19 B. T. A. 89; and *G. Corrado Coal & Coke Interests, Inc. v. Commissioner*, 19 B. T. A. 691.

After appeals in these three cases by the taxpayers, the Commissioner confessed error in the first two, and moved to dismiss in the third. The facts in relation to these matters are more fully set forth in our brief in the companion cases (Nos. 37-39).

The dissenting opinion of the Board in the instant cases also concedes the principle involved in the two groups of cases is the same. We quote the dissenting opinion in full (No. 35, R. 28):

"Van Fossan, dissenting: The principle announced in the decisions of the Board on which the prevailing opinion in these cases is predicated has been considered by the Court of Appeals of the District of Columbia and the Circuit Courts of Appeal in three of the cases cited and in each instance the Board has been reversed. Valentine-Clark Co., 14 B. T. A. 562; reversed, 52 Fed. (2d) 346; Isaac Goldmann Co., 17 B. T. A. 1103; reversed, 51 Fed. (2d) 427; Myles Salt Co., 18 B. T. A. 742, reversed, 49 Fed. (2d) 232. On further consideration of the merits of the issue involved, I am convinced that the Board has been in error in all of these cases and that the petitioners should prevail.

"Goodrich agrees with this dissent."

The Circuit Court of Appeals for the 9th Circuit in its opinion in the instant cases (No. 35, R. 110) is in agreement. The Court after referring to the *Myles Salt Company,* the *Isaac Goldmann Company* and *Valentine-Clark Company* cases, supra, says:

"We have declined with all due respect to follow decisions to the contrary by coordinate courts. These decisions are pressed upon us here as a ground for reversing the action of the Board of Tax Appeals. It is not disputed by the Commissioner that the principle of those decisions is applicable to the case in hand. If by reason of the fact that the Commissioner by a mere computation applied to the return filed under the Revenue Act of 1918 can determine the proper tax levied by the Act of 1921 on petitioner's income, a new return is unnecessary, then a new return is unnecessary in the case at bar. Indeed, the deci-

sions above referred to apply with more force to the case at bar where the only question involved is a matter of computation of a tax at a new rate than to a case where the question under consideration is a deduction which a statute expressly requires be shown by the taxpayer in his return as fixed by the law applicable to the taxation of the income shown in the return."

And finally, the Circuit Court of Appeals states:

"We wish to make it clear that unless we are correct in holding that the decisions of our coordinate courts are erroneous this case as well as the companion case should be reversed."

And Commissioner's counsel in his brief filed in the instant case, before the Circuit Court of Appeals for the 9th Circuit, states:

"As in Nos. 7209-7211, we recognize that this question has in substance been decided by three appellate courts, but we insist that those decisions are not here controlling."

We, therefore, respectfully direct the Court's attention to our more extended arguments in support of our position as set forth in our brief Nos. 37-39.

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**CONCLUSION.**

We submit that the repeal of the Income Tax provisions of the 1924 Act as at January 1, 1925, and the substitution of similar provisions of the 1926 Act as at the same date, discloses the intent of Congress to adopt a return such as was filed herein as a return under the 1926 Act.

We submit that the Commissioner had it in mind to adopt a return such as was filed herein as a return under the 1926 Act, this being evidenced by his supplying these taxpayers with a form which was intended merely as an amendment of the original return.

We submit that Congress had the right, and exercised the right, to cut down the statutory period within which an additional assessment might be made (or a deficiency notice mailed), from four years under the 1924 Act, to three years as provided in the 1926 Act; that as a result of this shortening of the statutory period, it was the duty of the Commissioner to make an assessment of the additional taxes claimed, or mail his deficiency notices, within three years from the date of the filing of the original return on July 15, 1925.

And finally, we submit that the Commissioner having failed to take the necessary action within the three year period, he is barred from further proceedings herein.

Dated, San Francisco, California,
September 19, 1934.

Respectfully submitted,
JOHN FRANCIS NEYLAN,
J. PAUL MILLER,
*Attorneys for Petitioners.*

**(Appendices A and B Follow.)**

## Appendix A

### PERTINENT PORTIONS OF THE REVENUE ACT OF 1924 (43 STAT. 253).

"Sec. 230. In lieu of the tax imposed by Section 230 of the Revenue Act of 1921 there shall be levied, collected, and paid for each taxable year upon the net income of every corporation a tax of 12½ per centum of the amount of the net income in excess of the credits provided in Sections 236 and 263."

"Sec. 277(a). Except as provided in Section 278 and in subdivision (b) of Section 274, and in subdivision (b) of Section 279—

"(1) The amount of income, excess-profits, and war-profits taxes imposed by the Revenue Act of 1921, and by such Act as amended, for the taxable year 1921 and succeeding taxable years, and the amount of income taxes imposed by this Act, shall be assessed within four years after the return was filed, and no proceeding in Court for the collection of such taxes shall be begun after the expiration of such period."

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### PERTINENT PORTIONS OF THE REVENUE ACT OF 1926 (44 STAT. 9).

"Sec. 200. When used in this title—

"Sec. 200 (a). The term 'taxable year' means the calendar year, or the fiscal year ending during such calendar year, upon the basis of which the net income is computed under Section 212 or 232. The term

'fiscal year' means an accounting period of twelve months ending on the last day of any month other than December. The term 'taxable year' includes, in the case of a return made for a fractional part of a year under the provisions of this title or under regulations prescribed by the Commissioner with the approval of the Secretary, the period for which such return is made. *The first taxable year, to be called the taxable year 1925, shall be the calendar year 1925, or any fiscal year ending during the calendar year 1925.*" (Italics supplied.)

"Sec. 207 (c). Any amount paid before or after the enactment of this Act on account of the tax imposed for a fiscal year beginning in 1924 and ending in 1925 by Title II of the Revenue Act of 1924 shall be credited toward the payment of the tax imposed for such fiscal year by this Act, and if the amount so paid exceeds the amount of such tax imposed by this Act, the excess shall be credited or refunded in accordance with the provisions of Section 284."

"Sec. 230 (a). In lieu of the tax imposed by Section 230 of the Revenue Act of 1924, there shall be levied, collected, and paid for each taxable year upon the net income of every corporation, a tax at the following rates:

"Sec. 230 (a) (1). For the calendar year 1925, 13 per centum of the amount of the net income in excess of the credits provided in Sections 236 and 263; and

"Sec. 230 (a) (2). For each calendar year thereafter, 13½ per centum of such excess amount.

"Sec. 277 (a). Except as provided in Section 278—

"Sec. 277 (a) (1). The amount of income taxes imposed by this Act shall be assessed within three years after the return was filed, and no proceeding in Court without assessment for the collection of such taxes shall be begun after the expiration of such period."

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TREASURY DECISION 3843.

To Collectors of Internal Revenue and Others Concerned:

Any corporation which has filed a return for a fiscal year ending in 1925 and paid or become liable for a tax computed under the Revenue Act of 1924, and is subject to additional tax for the same period under the Revenue Act of 1926, must file a new return covering such additional tax on or before May 15, 1926. Payment of the additional tax may be made at the time the return is filed or, if installment payments are desired, such installments must be paid at the time they would be due if based upon a return for the fiscal year ended February 28, 1926.

D. H. Blair,
Commissioner.

Approved April 1, 1926,
Garrard B. Winston,
Acting Secretary of the Treasury.

(V-1 C-B. 99)

## Appendix B

THE FOLLOWING IS THE DECISION OF THE CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT IN MYLES SALT CO. v. COMMISSIONER, 49 FED. (2d) 232, RENDERED ON APRIL 21, 1931:

"The sole question is limitation. On May 16, 1921 (May 15th was Sunday), Myles Salt Company filed its income tax return for its fiscal year ending February 28th, 1921, and paid the tax shown by it, all according to the Revenue Act of 1918 then in force (40 Stats. 1057). On November 23rd, 1921, the Revenue Act of 1921 was approved, effective as to its income tax provisions as of January 1st, 1921 (Section 263), and repealing as of January 1st, 1921, the corresponding provisions of the Revenue Act of 1918 (Section 1400). No change was made affecting the tax of this taxpayer except that, because its net income exceeded $25,000.00, it was deprived since January 1st of the credit of $2000.00 allowed by Section 236 (42 Stat. 257), thus increasing its tax about $35.00. *No new or amended return showing this changed computation was filed or requested.* On September 17, 1926, the Commissioner sent out a deficiency notice preparatory to assessing an additional tax arising mainly from corrections in the deductions claimed for depletion and inventory losses. Before the Board of Tax Appeals the taxpayer claimed that the assessment was barred by the provisions then in force of the Revenue Act of 1926, Section 277 (a) (2), 26 U. S. C. A. 1057 (a) (2), 'The amount of income, excess profits, and war profits taxes imposed by the Revenue Act of 1921, and by such Act as amended, for the taxable year 1921 * * * shall be assessed

within four years after the return was filed'. By Section 200 (1) of the Act of 1921 (42 Stat. 227) the taxable year 1921 included fiscal years ending during 1921. The Board held, three members dissenting, that no lawful return had been filed for the fiscal year in question, and no bar had attached because of Section 278 (a) of the Act of 1926 (26 U. S. C. A. 1058). 'In case of a false or fraudulent return with intent to evade the tax or a failure to file a return the tax may be assessed * * * at any time'.

*The return which will date the beginning of the limitation period, and lack of which will prevent limitation, is one made in substantial conformity to the law which required it.* The Act of 1918 and that of 1921 in Section 239 (40 Stat. 1081, 42 Stat. 259 both require 'Every corporation * * * shall make a return stating specifically the items of its gross income and the deductions and credits allowed by this title. The return shall be sworn to by the president, vice-president, or other principal officer and by the treasurer or assistant treasurer.' It is no return as respects limitation if made tentatively and not intended to be the basis of an assessment, *Florsheim Brothers v. United States,* 280 U. S. 453, 50 S. Ct. 215, 74 L. Ed. 542; or if not sworn to at all, *Lucas v. Pilliod,* 281 U. S. 245, 50 S. Ct. 297, 74 L. Ed. 829, 67 A. L. R. 1315. It must purport to cover the entire period involved, and must show the items of gross income, deductions and credits of the taxpayer with such definiteness as to permit an assessment of the tax, if accepted as correct. *United States v. National Tank & Export Co.* (C. C. A.), 45 Fed. (2d) 1005. *Perfect accuracy*

*and completeness is not necessary, for there could rarely be an additional tax assessed except on some correction of the return, and, if the need of correction is held to make it no return, such deficiency assessments would never be barred.* If, on the other hand, the return is so false as to show fraud and intent to evade the tax, there is by the special provision above quoted no limitation. The Board found no fraud or bad intent in this return. *If it had been filed or refiled the day after the Act of 1921 was passed, it would have been clearly good; the error in the deductible credit being easily remediable by the Commissioner without further information from the taxpayer.* But it is said that, because it was filed before the Act was passed it cannot be a return under the Act. The Act itself, however, is retroactive, declaring itself to be effective as of January 1, 1921. If in effect on that date for other purposes, why should it not speak from that date as to filing returns? Difficulty can arise only concerning returns for fiscal years ending during 1921. Congress had them in mind, for in Section 205 (a) it was provided: 'If a taxpayer makes return for a fiscal year beginning in 1920 and ending in 1921, his tax under this title for the taxable year 1921 shall be' arrived at on a basis stated. Entirely conscious, therefore, that such returns had already been filed before the Act was passed on November 23rd, the only provision Congress made as to filing them was Section 227 (a): 'Returns * * * shall be made on or before the 15th day of the third month following the close of the fiscal year.' If this requirement is read as of January 1st the return in question was filed in literal compliance with it.

That it was the intent of Congress thus to ratify and adopt returns filed between January 1st and the passing of the Act also appears from its repeal of the former Act as of January 1st, so that there was no law except the Act of 1921 that could apply to such returns. This intent is further shown by the history of the legislation, for this same situation arose when the Act of 1918, approved February 24th, 1919 (40 Stat. 1057), retroactively displaced the Act of 1917. Its Section 227 (a) was identical with that just quoted, and was interpreted by Treasury Decision 2797, whereby fiscal year returns filed before the Act was passed were treated as sufficient, and were referred to as the 'original return', but if an additional tax was due under the new Act 'a return covering such additional tax' only was required, and called an 'amended return.' Thus in no case was the original return treated as a nullity, but as valid so far as it went. By a settled principle Congress is to be considered as having adopted this official construction when it reenacted the same words in the new law. *United States v. G. Falk & Bro.*, 204 U. S. 143, 27 S. Ct. 191, 51 L. Ed. 411; *Stairs et al. v. Peaslee*, 18 Howard 521, 15 L. Ed. 474. Many decisions of the Board of Tax Appeals have held that returns filed before the law was passed are not nullities, but sufficient to date the beginning of limitation if no additional tax was imposed on the particular taxpayer by the law, although the return was actually incorrect and the tax paid insufficient. *Ley & Co., Inc.*, 9 B. T. A. 749; *Palmetto Coal Co.*, 11 B. T. A. 154; *Denholm & McKay Co.*, 15 B. T. A. 225. *This return was retained by the Commissioner, together with the money paid on*

*it. An audit of it was had in 1923 without request for any amendment of it. The deficiency letter of September 17th, 1926, states that 'An audit of your income and profits tax return for the fiscal year ended February 28, 1921, has resulted', etc., and the statement attached is based upon the figures of the return; so that the additional tax is proposed to be assessed on the return.* These things are mentioned not as raising an estoppel to deny that it is a return, but as further tending to show that it was treated in administrative practice as, and understood to be, a duly filed return and practically sufficient as such until the question of limitation was raised. We hold that limitation is to be dated from its filing on May 16th, 1921. We do not inquire whether the tax for the period prior to January 1st, 1921, which is by Act of 1921, Section 205 (a), to be measured by the provisions of the Act of 1918, is imposed by the one Act or the other, since the limitation period applicable to either had expired when the assessment was attempted. The entire assessment is barred. The petition for review is granted, and the case is remanded for further proceedings not inconsistent herewith."

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**THE FOLLOWING IS THE DECISION OF THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA IN ISAAC GOLDMANN CO. v. DAVID BURNET, 51 FED. (2d) 427, RENDERED ON JUNE 29, 1931:**

"Groner, Associate Justice:

Appellant kept its books and made its tax returns on the fiscal year basis. Its taxable year 1920-1921 was the twelve months' period ending

April 30, 1921. On July following, it filed its return under the provisions of the Revenue Act of 1918 (40 Stat. 1057), showing net income of $82,964.70 and a resulting tax liability of $15,830.26. Gross income was properly shown, the schedules required by Treasury regulations were attached, and the honesty and good faith of the return is not questioned. More than four years later the Commissioner made a deficiency assessment.

On November 23, 1921, the Revenue Act of 1921 was passed, and its provisions made retroactive as of January 1. (Sec. 263, 42 Stat. 227, 271.) The only effect of the 1921 act, so far as it concerned appellant's tax liability for the period January 1 to the end of appellant's fiscal year—April 30, 1921—was to limit proportionately appellant's right to a specific exemption, allowed under the 1918 act but not allowed under the 1921 act, to the period prior to January 1. The result of this was to make appellant liable, under the new act, for a small additional tax. The Commissioner claims that this fact made necessary the filing by appellant of a new return, and that its subsequent filing of an amended return, pursuant to Treasury Decision 3220, should either be treated as the only return for the fiscal year period in controversy, or else appellant should be regarded as never having filed any return, and that, in either case, the deficiency assessment would be within the limitation period.

Treasury Decision 3220, issued the latter part of 1921, was designed to correct a practice apparently then more or less general on the part of taxpayers in using 'appreciated' values in determining invested capital, and required, from such

as had, an amended return within ninety days. The bulletin confined the requirements of the return to such additional information only as should be necessary to show the correct values to redetermine the amount of tax to be assessed. In obedience to this bulletin, and for the purpose only of correcting the item of invested capital as shown in the former returns, appellant, still claiming the 1918 exemption, filed on January 14, 1922, an amended return, and the question which we have to answer is whether the four-year period of limitations began to run with the filing of the original return in July, 1921, because if it did not, the additional assessment is valid. The Board held, following *Hutchinson Co. v. Commissioner,* 14 B. T. A. 367, 8, that because the 1921 Act abolished the $2000 exemption, appellant owed additional taxes under the provisions of that act, and, inferentially at least, since it owed additional taxes, it owed likewise the duty of filing a return with specific reference to the 1921 Act, and that, until it did so, the limitation did not begin to run.

In this conclusion, we find ourselves unable to agree. We can find no provision in the Revenue Act of 1921 which requires the filing of a new return from taxpayers using the fiscal year basis, in cases where a return had been duly filed under existing law, except, perhaps, in those cases in which, under the 1921 Act, new and different taxes are assessed or a new basis of taxation provided, as is the case in some few instances not here involved. *The Commissioner himself realized the confusion and waste inevitable if the returns already made were wholly disregarded and new*

*ones required, and, in Treasury Decision 3310, demanded new returns from taxpayers who had, under the 1918 Act, made returns for the fiscal year ending during 1921 only in those cases in which the taxpayer was subject to specific additional taxes under the 1921 Act. The purpose of this ruling, obviously, we think, was to provide a new return only in those cases where, under the provisions of the latter act, a liability for other or additional taxes was created through a change in the basis of computation, necessitating other information or new figures to allow the Commissioner to determine the tax liability under the Act.*

In this instance, the taxpayer had filed the return it was required to file under the then prevailing law, and paid the tax. The new law was in all respects the same as the old so far as its tax liability was concerned. The repetition of the figures already filed would have been a wholly vain and useless proceeding. *The elimination of the part of the exemption not allowable after January 1 was a simple computation appearing from the returns filed, and the adjustment of this item to conform to the new law needed neither explanation nor new returns.* The new act provided the occasion, and the return furnished the basis, and the act itself imposed on the Commissioner (250 (b)) Revenue Act 1921, the duty of examination to the end that the correct tax should be ascertained. The retroactive provisions of the 1921 Act present no novelty, for the 1918 Act itself replaced retroactively the 1917 Act. Under the provisions of the 1918 Act, the tax was increased over that exacted under either the 1916 or 1917 Act, but,

under its provisions as to filing returns on the fiscal year basis, the Commissioner ruled (Treasury Decision 2797) that the new return required was satisfied by inclusion only of the items embracing the additional tax, and spoke of the former returns, i. e., those filed before the Act was approved, as original returns, and the additional returns required as supplemental or amended returns, and while we do not invoke this use of words as foreclosing the question or as controlling, we nevertheless think it clearly reflects the real situation, and that, in this aspect, the returns filed by appellant were, especially in view of the admission that they were in all respects honestly believed to represent the true state of appellant's liability, valid returns and not a nullity. *The case turns, we think, upon this: If the original returns filed by appellant were, as the Board apparently thought, a nullity, then, obviously, the deficiency assessment was in time, but if, on the contrary, they were valid returns susceptible of amendment by the Commissioner in the ascertainment of the correct tax, or requiring only a corrected return in eliminating that portion of the exemption which was abolished by the later act, then, equally, obviously, the deficiency assessment was made too late.* It was conceded, in the opinion of the Supreme Court in *Florsheim Brothers v. United States*, 280 U. S. 453, 462, 50 S. Ct. 215, 218, 74 L. Ed. 542, that the filing of a return, though defective or incomplete, is 'sufficient to start the running of the period of limitation; and that the filing of an amended return does not toll the period.' It was likewise held in *Willingham Loan Co. v. Commissioner* (C. C. A. 5), 36 F. (2d) 49, that the statute begins to run

whenever the taxpayer has filed returns with the Commissioner *which show facts upon which the proper assessment for the taxable period may be made.* See also *Thomas v. United States* (D. C.), 22 F. (2d) 1000. The Board of Tax Appeals has also held that this is the rule. See *Appeal of National Refining Co. et al.*, 1 B. T. A. 236; *Appeal of New York Trust Co.*, 3 B. T. A. 583; *Lancaster Lens Co. v. Commissioner of Internal Revenue*, 10 B. T. A. 1153.

To say that the original return filed by appellant in this case is no return, though filed in strict conformity to the law then prevailing is, we think, wholly incorrect. To call the return which it later filed to conform to a ruling of the Department—a thing in itself wholly unresponsive to anything in the 1921 Act—a new return, wholly unrelated to the other, is, we think, equally incorrect. Appellant, under the method which it had adopted with the consent of the Department, was required to file its returns within three months after the expiration of its fiscal year, and to pay its tax. If it had failed to do either, it would have made a default subjecting it to penalty. If it had filed a dishonest report, it would have been subject to still further penalty. As it happened, it did precisely what the law, as it then was, required it to do, and now to say that, because of the retroactive provisions of the new act, what it did was a nullity, is, it seems to us, without justification or support. If more was required, it was supplementary and not original, and hence, as the Supreme Court said, did not toll the statute. We do not mean to say that the Commissioner might not have required the filing of additional returns to make those already filed conform to the new law, but

such new returns, if filed for that purpose, would, as we think, have relation to the original return, and the latter, rather than the former, would be the starting point for the limitation.

The precise question here involved was likewise involved in *Myles Salt Co. v. Commissioner* (decided by the Fifth Circuit C. C. A., April 21, 1931), 49 Fed. (2d) 232, and it was decided there, as we think correctly, that the original return established the period from which the limitations began to run.

Reversed."

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**THE FOLLOWING IS THE OPINION OF THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT, IN VALENTINE-CLARK CO. v. COMMISSIONER, 52 FED. (2d) 346, RENDERED ON JULY 31, 1931:**

"Booth, Circuit Judge, delivered the opinion of the Court.

This is a petition for review of an order of the Board of Tax Appeals which redetermined a deficiency in the income and profits taxes of petitioner for the fiscal year ending January 31, 1921. The determination of the Commissioner of Internal Revenue was upheld.

The facts are not in dispute. The petitioner, taxpayer, kept its books during the taxable period involved on the basis of a fiscal year ending January 31, 1921. April 14, 1921, the taxpayer filed its return for the fiscal year showing a net income of $37,527.43. In due course, it paid taxes on that basis. After the enactment of the Revenue Act of 1921 (November 23, 1921 (42 Stat. 227)), the taxpayer filed no other or further return for the fiscal

year ending January 31, 1921. No waiver of the statutory limitation period on assessment or collection of the 1921 income or profits taxes was executed or filed with the Commissioner of Internal Revenue by the taxpayer. No notice was served upon the taxpayer requiring a further return or statement as provided by Section 1305 of the Revenue Act of 1918 (40 Stat. 1142), and by Section 1307 of the Revenue Act of 1921 (42 Stat. 310). June 3, 1926, the Commissioner mailed to the taxpayer the so-called sixty-day deficiency letter, provided for in Section 274 (a) of the 1926 Revenue Act (26 U. S. C. A. 1048), showing a net income for the fiscal year ending January 31, 1921, of $46,734.04, and a deficiency in tax due from the taxpayer for said fiscal year of $5777.35. No part of said sum of $5777.35 has been assessed against the taxpayer either before or since the mailing of said deficiency letter, and no part of said sum has been paid by the taxpayer.

*There is no provision in the Revenue Act of 1921 requiring a corporation, which, prior to the passage of that Act, had filed its return for a fiscal year ending in 1921, to file any additional return for such year.*

In the return filed by the taxpayer on April 14, 1921, an exemption of $2000 was used and this was allowable under the 1918 Revenue Act (Sec. 236, 40 Stat. 1080); but this exemption was not allowable under the 1921 Revenue Act inasmuch as the taxable income of the petitioner exceeded $25,000.00 (1921 Revenue Act, Sec. 236, 42 Stat. 257).

By Sections 263 and 338 of the Revenue Act of 1921 (42 Stat. 271, 277), the provisions of the Act included in Titles II and III, Sections 200-338

(relating to income taxes and profits taxes), were made retroactive, taking effect as of January 1, 1921.

Accordingly, the taxpayer was not entitled to the full exemption claimed of $2000, but only to eleven-twelfths thereof, or $1833.33, since the 1918 Act applied to the first eleven months of the fiscal year ending January 31, 1921.

Apart from this slight discrepancy, the return of the taxpayer filed April 14, 1921, was in accord with the provisions of the 1921 Revenue Act, and the discrepancy was apparent on the face of the return.

*In making up the schedules attached to the deficiency letter dated June 3, 1926, the Commissioner made use of the return of the taxpayer, which was filed April 14, 1921, and among other matters made correction of the discrepancy above mentioned.*

Relevant statutory provisions are set out in the margin. (These statutory provisions are omitted in this brief.)

The question presented by the present petition for review is whether the applicable period of limitation had run prior to the sending out by the Commissioner of the sixty-day deficiency letter of June 3, 1926.

The Commissioner takes the position that the Statute of Limitations contained in the 1921 Revenue Act is the one applicable; the taxpayer contends that the Statute of Limitations contained in the 1924 Revenue Act is the one applicable.

Inasmuch as the period of limitation is the same (four years from the filing of the return)

under either statute, we pretermit discussion of the question, which statute governed.

The Board of Tax Appeals stated its view of the case as follows:

'*It is stipulated that in the return filed the taxpayer took an exemption in the amount of $2000 in the computation of tax due under the Act of 1918, and that under the Act of 1921, it was not entitled to any such exemption for the fiscal year ended January 31, 1921.* It is obvious, therefore, that an additional tax for the fiscal year ended January 31, 1921, was imposed on this taxpayer by the Revenue Act of 1921. In such circumstances the Commissioner by his regulations, supra, required an additional return. Such return has never been filed, and, therefore, there is no return of this taxpayer for the year ended January 31, 1921, which can be regarded as the return required by law and no date from which the statute of limitations started to run against this petitioner for such taxable year.'

Counsel for the Commissioner on this petition for review take a somewhat different view. In their brief their position is thus stated:

'In this case the statute could be satisfied only by the filing of a return *under* the Revenue Act of 1921. This necessarily means a return filed in response to the requirements of the 1921 Act, and this requirement could not have been satisfied before the statute was enacted',

and again:

'The return under the Act of 1921 could be made only after the enactment of that law. It follows that only upon the filing of a return for the taxable year 1921 some time after the passage of the 1921 Act could the statutory bar begin to

operate. Since petitioner has filed no such return, the Commissioner was and is free to assert a deficiency.'

We cannot agree with either of the positions thus stated. We do not think that it was the intention of Congress that all returns for fiscal years ending in 1921 which were filed prior to the passage of the Revenue Act of 1921 should be considered nullities.

*Viewing the facts in the light of the various statutory provisions quoted, we think it is clear that the taxpayer filed its return within the proper time; that the return contained the required information as to the various items; that the error in respect to the exemption appeared on the face of the return, and required no additional information for its correction.*

The return would unquestionably have been valid and would have set the Statutes of Limitations in motion if it had been filed the day after the approval of the Revenue Act of 1921; but that Act, by its terms, became effective January 1, 1921. It speaks as of that date, and we have no difficulty in holding that returns filed after January 1, 1921, which contained the information required by the Act were returns *under* the Act. That such was the intent of Congress, we think is shown by the provisions of Sec. 205 (a) of the Act (42 Stat. 232) which reads:

'That if a taxpayer makes return for a fiscal year beginning in 1920 and ending in 1921, his tax under this title for the taxable year 1921 shall be the sum of: * * * (followed by a stated basis);'

and the same section further provides:

'Any amount paid before or after the passage of this Act on account of the tax imposed for such

fiscal year by Title II of the Revenue Act of 1918 shall be credited toward the payment of the tax imposed for such fiscal year by this Act, and if the amount so paid exceeds the amount of such tax imposed by this Act, the excess shall be credited or refunded in accordance with the provisions of Section 252.'

These provisions, when read in connection with Sec. 1400 of the Revenue Act of 1921, (42 Stat. 320), which repealed the Revenue Act of 1918 as of January 1, 1921, and in connection with Section 227 (a) and 241 (a), (42 Stat. 251, 260), which fixed the time for filing returns, *show conclusively, in our judgment, that Congress intended to ratify and adopt the returns filed between January 1, 1921, and the passing of the Act of 1921.* Such a situation was not new. The Revenue Act of 1918, approved February 24, 1919, was also retroactive in its operation. It contained sections practically identical with Sections 227 (a), 241 (a), and 205 (a) of the Revenue Act of 1921. The returns filed before the 1918 Act was passed for fiscal years ending in 1918 were not treated as nullities but as 'original returns'; and if an additional tax was imposed by the Revenue Act of 1918, an additional return or an amended return only was required. See T. D. No. 2797.

*Still further, the Commissioner himself, in preparing the sixty-day deficiency letter of June 3, 1926, did not treat the return of the taxpayer, filed April 14, 1921, as a nullity. On the contrary, he made full use of it as a basis for his deficiency letter.* We mention this fact not as a ground for waiver or estoppel, but solely as showing that the Government officials whose duty it was to pass upon returns did not hold this par-

ticular return to be a nullity. *The position that the return was a nullity is evidently an afterthought, arising when the question of the Statute of Limitations was raised.*

*As to the effect of T. D. Nos. 3305 and 3310, set out in the margin, it may well be doubted whether the 'additional tax' therein mentioned covers or was intended to cover a partial loss of exemption, such as occurred in the case at bar, wherein no new tax was to be levied and no new basis of taxation to be applied. But even if this view is not correct, yet said Treasury Decisions do not purport to make returns already filed nullities, but recognize them and simply call for a further return as to the additional tax.*

*In the case at bar, no such further return was necessary. The information contained in the return as filed was sufficient and was demonstrated so to be by the Commissioner himself. The filing of a second return after the passage of the Revenue Act of 1921 would have been a useless repetition.*

We hold that the return filed April 14, 1921, was made by the taxpayer in good faith and in substantial conformity to both the Revenue Act of 1918 and the Revenue Act of 1921. Such return was not tentative, and was intended as the basis of an assessment. It showed the items of gross income, deductions and credits of the taxpayers. It covered the entire period involved. It was properly signed and verified. *The fact that it contained an inaccuracy did not cause it to become a nullity. United States v. Mabel Elev. Co.*, (D. C.) 17 F. (2d) 109. The Board of Tax Appeals has so held in numerous cases. Mabel Elev.

Co., 2 B. T. A. 517; Indiana Rolling Mills Co., 13 B. T. A. 1141; Darling-McDuff Coal Co., 15 B. T. A. 110; Denholm & McKay Co., 15 B. T. A. 225. And the mere fact that the return was filed before the Revenue Act of 1921 was passed did not cause it to become a nullity. Such has been the ruling of the Board of Tax Appeals in numerous cases. Fred T. Ley & Co., Inc., 9 B. T. A. 749; M. Brown & Co., 9 B. T. A. 753; Keystone Coal & Mining Co., 10 B. T. A. 295; Palmetto Coal Co., 11 B. T. A. 154; Denholm & McKay Co., supra.

*It follows from the foregoing that the return was valid and was the return required by existing law; and that the Statute of Limitations began to run from April 14, 1921, the date when the return was filed.*

The question involved in this case has been passed upon, and the same conclusion reached, by the Circuit Court of Appeals for the Fifth Circuit in the case of *Myles Salt Co. v. Commissioner,* 49 F. (2d) 232; also by the Court of Appeals of the District of Columbia in the case of *Isaac Goldmann Co. v. Commissioner,* 51 Fed. (2d) 427.

We are in full accord with the well-reasoned opinions in both of these cases, and with the conclusions reached.

The petition for review in the case at bar is granted, and the cause is remanded to the Board of Tax Appeals for further proceedings not inconsistent with the views herein expressed". (Italics supplied).